

HOUSE BILL 3654

By DuBois

AN ACT to amend Tennessee Code Annotated, Title 20;
Title 25; Title 26; Title 29 and Title 66, to enact
the Wrongful Lien Injunction Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 1, is amended by adding Sections 2 through 8 of this act as a new part.

SECTION 2. This part shall be known and may be cited as the "Wrongful Lien Injunction Act."

SECTION 3. As used in this part, "wrongful lien" refers to a lien as defined in § 66-3-302(8) which is filed, made, perfected or recorded against a person's property and the lienor had no legal interest or right provided for by law in the person's property.

SECTION 4.

(a) The owner of any property who believes that the owner is the victim of a wrongful lien may file a verified written petition in the general sessions court, chancery or circuit in the county in which the petitioner or respondent resides or in which any of the events occurred for a civil wrongful lien injunction against the person filing, making, perfecting or recording the lien, hereafter the lienor, against the property of such person. The filing of such wrongful lien injunction shall be available to the owner of the property only after the owner has first contacted the lienor in writing advising the lienor that the lien was filed against the person's property in error and the lienor failed to remove the wrongful lien within forty-five (45) days from the date the lienor was initially contacted by such person.

(b) The administrative office of the courts shall develop and adopt forms for petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service,

and any other necessary forms in accordance with this part. The office shall provide the forms to the clerk of each court.

(c) The court clerks shall provide the forms to persons seeking to proceed under this part.

(d) The courts shall issue all petitions, injunctions, ex parte injunctions, and any other necessary forms in the form prescribed by the administrative office of the courts.

SECTION 5.

(a) The petition for a civil wrongful lien injunction shall include:

(1) The name of the petitioner;

(2) The name and address, if known, of the respondent;

(3) Specific actions and dates of the actions constituting the alleged wrongful lien and the date on which the lienor was contacted by the petitioner pursuant to Section 4(a);

(4) If there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(5) Corroborating evidence of a wrongful lien, which may be in the form of a police report, affidavit, record, statement, item, letter, copy of the lien, or any other evidence which tends to prove the allegation of wrongful lien.

(b) If the court determines there is reason to believe that a wrongful lien has been filed, made, perfected or recorded, the court may issue an ex parte civil wrongful lien injunction that includes any of the following:

(1) Enjoining the respondent from filing, making, perfecting or recording any further liens without specific permission of the court;

(2) Ordering that the lien be discharged; and

(3) Any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(c) An ex parte civil wrongful lien injunction issued under this section shall state on its face:

(1) That the respondent is entitled to an expedited hearing, upon written request filed with the court within ten (10) days of the service of the injunction;

(2) The name and address of the court where the request may be filed;

(3) That if the respondent fails to request a hearing within ten (10) days of service, the ex parte civil wrongful lien injunction is automatically modified to a civil wrongful lien injunction without further notice to the respondent and that the civil wrongful lien injunction expires three (3) years after service on the respondent;

(4) The following statement:

"Attention. This is an official court order. If you disobey this order, the court may find you in contempt."; and

(5) That if the respondent requests, in writing, a hearing after the ten-day period specified in subdivision (c)(3) the court shall set a hearing within a reasonable time from the date the hearing is requested.

(d) The ex parte civil wrongful lien injunction shall be served on the respondent within thirty (30) days after the date it is signed, and is effective upon service.

SECTION 6.

(a)

(1) A hearing requested by the respondent as allowed under Section 5 shall be expedited.

(2) If the court finds compelling reasons to continue the hearing date, the hearing shall then be held at the earliest possible time.

(b) At the hearing the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that the respondent has filed, made, perfected or recorded a wrongful lien against the petitioner or the petitioner's property.

SECTION 7.

(a) If the respondent does not request a hearing in writing within ten (10) days of service of the ex parte civil wrongful lien injunction under Section 5, the injunction automatically becomes a civil wrongful lien injunction without further notice to the respondent and expires three (3) years from the date of service.

(b) The civil wrongful lien injunction issued by the court shall include the following statement:

"Attention. This is an official court order. If you disobey this order, the court may find you in contempt."

(c) A certified copy of an ex parte civil wrongful lien injunction or civil wrongful lien injunction is presumed to be a valid existing order of the court for a period of three (3) years from the date of service of the ex parte civil wrongful lien injunction on the respondent.

(d)

(1) Any changes or modifications of the ex parte civil wrongful lien injunction are effective upon service on the respondent. The original ex parte civil wrongful lien injunction continues in effect until service of the changed or modified civil wrongful lien injunction on the respondent.

(2) The ex parte civil wrongful lien injunction or civil wrongful lien injunction may be dissolved at any time upon written application by the petitioner to the issuing court.

(e)

(1) The court clerk shall provide, without charge, to the petitioner one (1) certified copy of the injunction issued by the court and one (1) certified copy of the proof of service of the injunction on the respondent.

(2) Charges may be imposed by the clerk's office for any additional copies.

SECTION 8.

(a) The remedies provided in this part for enforcement of the orders of the court are in addition to any other civil and criminal remedies available.

(b) The court shall hear and decide all matters arising pursuant to this part.

(c) After a hearing with notice to the affected party, the court may enter an order requiring the respondent to pay all costs associated with the filing of the action by the petitioner, including reasonable attorney's fees, and if the court determines there has been blatant disregard for the law by the respondent in the filing, making, perfecting or recording the wrongful lien or in failing to take action to remove a wrongful lien so filed, made, perfected or recorded within a reasonable time after having been contacted by the owner of the property against which such lien was filed, made, perfected or recorded, the court may award liquidated damages to the petitioner in such amount as the court deems appropriate.

SECTION 9. Tennessee Code Annotated, Section 66-24-101, is amended by adding the following language as a new, appropriately designated subsection:

() Whenever a lien is filed in the register's office against a person's property, the register shall require the lienor to mail a copy of Sections 2 -8 of this act to the name and address of the owner of the property against whom or which the lien was made, filed, perfected or recorded.

SECTION 10. This act shall take effect July 1, 2008, the public welfare requiring it.